

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** DENIS R. COLEMAN, LEV BELOV,  
TODD F. BASCHE and PIERRE-ALAIN COTTE

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Appeal No. 1997-1383  
Application No. 08/217,392

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ON BRIEF

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Before JERRY SMITH, BARRETT, and HECKER, **Administrative Patent Judges**.

HECKER, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal from the final rejection of claims 1 through 6, 8, 9, 12, 17, 24, 27 through 37, 41

through 45, 50, 57, and 60 through 71, all of the claims pending in this application.<sup>1</sup>

The invention relates to the manipulation of documents in an information processing system, and more particularly to a user interface for managing one or more document pages arranged in stacks and for navigating within the stacks of document pages in a computer system.

Representative independent claim 1 is reproduced as follows:

1. An information processing method comprising  
displaying a plurality of page  
representations each corresponding to a  
respective page and a plurality of stack  
representations each corresponding to a  
respective plurality of pages, wherein a  
respective stack representation is visually  
distinctive from one or more page  
representations, each of said plurality of  
stack representations comprising  
a depiction of a stack of pages and an  
image corresponding to a current page in said stack,  
and  
a request area by which an operator may  
specify a page in said stack to be a new current  
page, and  
receiving one or more operator requests.

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<sup>1</sup>Appellants' brief indicates that claims 7 and 13 are currently pending, but the Examiner is correct that these claims have been canceled (amendment B, received November 13, 1995).

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The references relied on by the Examiner are as follows:

Levine et al. (Levine)                      5,060,135                      Oct. 22, 1991

Eight-in-One (Eight), Spinnaker Software Corp., 1989, pp. 43-44

Jakob Nielsen (Nielsen), Hypertext and Hypermedia, 1990,  
Academic Press, Inc., New York, pp. 1-3, 15-27, and 127-140.

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Claims 1 through 6, 8, 9, 12, 17, 24, 27 through 37, 41 through 45, 50, 57, and 60 through 71 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nielsen in view of Levine and Eight.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the brief and the answer for the details thereof.

#### **OPINION**

After a careful review of the evidence before us, we agree with the Examiner that claims 1 through 6, 8, 9, 12, 17, 24, 29 through 37, 41 through 45, 50, 57, and 62 through 71 are properly rejected under 35 U.S.C. § 103(a). Thus, we will sustain the rejection of these claims but we will reverse the rejection of remaining claims on appeal (27, 28, 60 and 61) for the reasons set forth *infra*.

At the outset, we note that Appellants have indicated on page 5 of the brief that all claims do not stand or fall together. Appellants have grouped the claims as follows:

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Group 1-- claims 1, 2, 4, 8(1), 9(1), 12(1), 24(1), 29(1),  
30(1), 31(1), 33(1), 34, 35, 37, 41-45, 57, 62-64  
and 66.

Group 2-- claims 5, 12(5), 24(5), 29(5), 30(5), 31(5) and  
33(5).

Group 3-- claims 3, 6, 8(5), 9(5) and 36.

Group 4-- claims 27(1) and 60.

Group 5-- claims 17(1), 28(1), 50 and 61.

Group 6-- claims 32(1) and 65.

Group 7-- claim 27(5).

Group 8-- claims 17(5) and 28(5).

Group 9-- claim 32(5).

Group 10-- claims 67 and 70.

Group 11-- claim 68.

Group 12-- claim 69.

Group 13-- claim 71.

As a further note, we will only address Appellants' arguments of record. We are not required to raise and/or consider other issues. As stated by our reviewing court in ***In re Baxter Travenol Labs.***, 952 F.2d 388, 391, 21 USPQ2d 1281,

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1285 (Fed. Cir. 1991), "[i]t is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art." 37 CFR

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§ 1.192(a) as amended at 60 Fed. Reg. 14518 (Mar. 17, 1995), which was controlling at the time of Appellants' filing the brief, states as follows:

The brief . . . must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of [P]atent Appeals and Interferences, unless good cause is shown.

Also, 37 CFR § 1.192(c)(8)(iv) states:

For each rejection under 35 U.S.C. § 103, the argument shall specify the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied on in the rejection, and shall explain how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument shall explain why the references, taken as a whole, do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not properly be combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of this paragraph.

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Thus, 37 CFR § 1.192 provides that just as the court is not under any burden to raise and/or consider other issues, this board is also not under any greater burden.



**ANALOGOUS ART**

In determining whether a claim would have been obvious at the time of the invention, the Examiner must first determine the scope and content of the prior art. **Graham v. John Deere Co.**, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). "Although § 103 does not, by its terms, define the 'art to which [the] subject matter [sought to be patented] pertains,' this determination is frequently couched in terms of whether the art is analogous or not, *i.e.*, whether the art is 'too remote to be treated as prior art.'" **In re Clay**, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992) **citing In re Sovish**, 769 F.2d 738, 741, 226 USPQ 771, 773 (Fed. Cir. 1985).

In making this determination, we must consider two criteria. First, it must be determined if the prior art is from the same field of endeavor, regardless of the problem addressed. Secondly, even if the prior art is not in the same field of endeavor, it must be determined whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. **In re Clay, supra**, 966 F.2d at 658-659, 23 USPQ2d at 1060.

Appellants argue that, "the three cited references are not analogous art because they are not in the same field of endeavor, nor are they in the same field of endeavor as the present invention." (Brief-page 6). Appellants also contend that the field of "data retrieval systems", indicated by the Examiner, is too broad (brief-page 7). However, Appellants never state what they consider to be their field of endeavor, and without such, we are unable to determine if there is a difference.

Appellants discuss the "field of information processing" (specification, page 1, line 24), and assuming this is their field of endeavor, we find the applied references fall within this field also. In addition, we note that Appellants acknowledge their invention to be an **improvement** over Levine (Brief-page 3), thus we are at a loss to understand how Appellants' invention is in a different field of endeavor. Since we consider the applied references and Appellants' invention to be in the same field of endeavor, we find it unnecessary to determine whether the references are reasonably pertinent to the particular problem with which the

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invention is involved. We therefore find no merit in the non-analogous art argument.

**MOTIVATION**

Appellants argue that, "mere awareness of features in these references, even if it is analogous, is not sufficient to show a motivation to combine teachings." (Brief-page 12) "It remains appellants' position that neither the prior art nor any convincing line of reasoning suggests the desirability of combining the references." (Brief-page 13). These two points are repeated in various ways in response to ten statements found in the Examiner's Office Action and repeated on pages 12 and 13 of the brief.

"It should be too well settled now to require citation or discussion that the test for combining references is not what the individual references themselves suggest but rather what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art." *In re McLaughlin*, 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references.

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Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

The Examiner states "Nielsen does not explicitly define means to control this area. At the time that the invention was made, the patent to Levine et al. [would] have taught that the miniature stackable as suggested in Nielsen could be controlled by a keyboard or mouse (col. 1, lines 59-68)." (Answer-page 4.) On page 6 of the Answer, the Examiner ties Levine and Nielsen together with the following logic. "Levine et al. suggest that the background of their invention is found in [a] **data retrieval system** which would obviously be associated with a **data base** . . . Nielsen, his text is directed to navigating means for large information spaces. An information space or hypertext is a **data base**." (Emphasis added.)

Thus we note that the Examiner has presented reasons, at various points, to combine the cited references. In addition, we agree with the Examiner that the teachings of the

references, **as a whole**, would lead one of ordinary skill in the art to combine the advantages of one system with the advantages of another. In this case, and without the knowledge of Appellants' disclosure, it would have been obvious to view the stacks of pages in Nielsen and the stacks of pages in Levine and combine the advantages of each into one system. For example, Nielsen teaches the use of a request area to access a page anywhere in the stack (e.g. Figures 2.4 and 2.6, and the related text in the last paragraph of page 21). Thus, it would have been obvious to incorporate this selection process into the stacks of Levine, or vice-versa, use Levine's stacks as the pages in Nielsen.

The ultimate determination of whether an invention is or is not obvious is a legal conclusion based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. **See Graham**, 383 U.S. at 17-18, 148 USPQ at 467; **Miles Labs, Inc.**

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**v. Shandon Inc.**, 997 F.2d 870, 877, 27 USPQ2d 1123, 1128 (Fed. Cir. 1993).

Accordingly, we find the rejection of Appellants' claims contains sufficient motivation to combine the references cited.

#### **EXPECTATION OF SUCCESS**

Appellants state three objects of their invention and conclude that the Examiner's combination does not have a reasonable expectation of achieving these objects (citing M.P.E.P. § 706.02(j) in their footnote 31)(Brief-page 15).

We do not agree that a reasonable expectation of success is synonymous with achieving the objects of Appellants' invention. Appellants have not alleged that the page selection of Nielsen could not be adapted to work in Levine or, vice-versa, the stacks of Levine's pages could not be adapted to work in Nielsen.

Appellants state "Appellant believes this dual nature [expectation of success and motivation] is to be expected since a reasonable expectation of success is closely related to motivation . . . Thus, the Office Action has not made any

showing of a reasonable expectation of success. Rather, it has made an impermissible reconstruction of the present invention based on the disclosure of the present application." (Brief-page 15.)

Thus, Appellants' arguments regarding a reasonable expectation of success boil down to the arguments made regarding lack of motivation. Accordingly, for the same reasons recited *supra* finding sufficient motivation, we find a reasonable expectation of success.

#### ***LIMITATIONS OF THE CLAIMS***

Appellants next argue the limitations of the claims as grouped *supra*.

With respect to group 1, claim 1 being representative thereof, Appellants argue Nielsen uses a book metaphor, and a bound book, "is clearly distinguishable from a stack of pages." (Brief-page 17.)

Although we agree with Appellants on this point, we see nothing in claim 1 that involves this distinction. Claim 1 recites "a depiction of a stack of pages." No claim language prevents these pages from being bound.



Appellants argue "Appellant respectfully submits that Nielsen does not suggest any association between turning pages in a book and removing pages from one stack to another; this further shows a clear difference between the nature of a book and a stack of pages." (Brief-page 17.)

However, we find nothing in claim 1 relating to removing pages or any differences attributable to distinctions in the nature of a book. Moreover, Nielsen is not limited to the traditional text or book where information is presented in a sequential manner, first page one, then page two. Nielsen is nonsequential, allowing a reader to determine the order of reading pages (see Nielsen-page 1). Thus, just as Nielsen allows a person to view any page (e.g. of a book) without paging through sequentially, Levine's aligned stack could be improved with this teaching to access any page in the stack without sequentially paging through the stack. With regard to removing or moving pages from a stack, Levine clearly teaches this capability. For placing a stamp/page in a stack, note column 12, lines 40-43 where it states "Any other stamps 34 placed on stack 70 within the predetermined border edge limits are also automatically aligned with the rest of the stamps in

stack 70." For removing a stamp/page from a stack, note column 12, lines 50-53 where it states "The stamp 75 on top of the aligned stack 70 is the only stamp in the stack which may be selected and/or removed from the aligned stack 70 by the operations of the stylus."

Appellants argue, "Nielsen does not disclose or suggest displaying a stack representation. Even if such was disclosed, however, Nielsen does not disclose or suggest displaying a plurality of stack representations as claimed." (Brief-page 17). We disagree. Nielsen shows this in at least Figure 8.2, page 129, where several previously visited nodes are depicted. Each node is represented by a miniature, and a node can represent a stack of pages, i.e. a book. Moreover, Levine discloses plural stacks with the top page represented by a miniature (note for example column 12, lines 25-44).

Appellants argue "Nielsen is silent with regard to displaying a stack representation that is visually distinctive from a page representation." (Brief-page 18). However, we find this feature in Levine wherein it states, "and whether the item is a document stamp, tray icon, **icon for an aligned stack of stamps**, icon of a depository, or an accessory icon."

(emphasis added)(column 25, lines 60-62). In addition, remembering that a node can be a book or stack of pages, Nielsen states, "but it is also possible to use icons or just the names of the nodes." (bottom of page 129).

On page 19 of the Brief, Appellants state "Furthermore, Levine does not disclose or suggest 'a request area by which an operator may specify a page in said stack to be a new current page.'" As noted *supra*, this concept is taught in Nielsen, and the rejection is based on the combination of references, not each reference separately.

Thus, Appellants' arguments regarding unmet limitations of the claims, are not convincing as to the group 1 claims, represented by claim 1. Accordingly we will sustain the Examiner's rejection of claims 1, 2, 4, 8(1), 9(1), 12(1), 24(1), 29(1), 30(1), 33(1), 34, 35, 37, 41 through 45, 57, 62 through 64, and 66.

With respect to the rejection of the group 2 claims, with claim 5 as the representative claim, Appellants indicate the same arguments used with respect to the group 1 claims apply to the group 2 claims. We find these arguments unconvincing for the same reasons noted *supra* in discussing the group 1

claims. This is especially so since claim 5 recites nothing more, but even less than claim 1, in that the "request area" of claim 1 is absent from claim 5. In addition, Appellants argue:

. . . Nielsen does not disclose or suggest a static icon depiction of a stack of pages and a miniature replica of a printed representation of a current page in the stack.

With regard to the static icon, the Office Action argues that in Figs. 2.1, 2.4, 2.6 and 2.8 of Nielsen "the edges of the pages is a static icon depicting a stack of pages." Appellant disagrees. The displays shown in these figures illustrates either a hard-bound book or a spiral-bound book; therefore, the page edges do not portray a stack of pages but rather portray the pages in a book. (Brief-page 20.)

As noted *supra*, we agree with the Examiner. A book is clearly a stack of pages, albeit, pages that are bound. The claims do not distinguish between bound or unbound pages. In addition, Levine teaches this limitation at column 25, lines 60-62.

Appellants further argue that Levine does not disclose a "request area". (Brief-page 21.) However, we note that claim 5 does not require a "request area". In addition, this

limitation was shown to be met by the combination of references in the discussion regarding the group 1 claims. Accordingly, we will sustain the Examiner's rejection of the group 2 claims, that is claims 5, 12(5), 24(5), 29(5), 30(5), 31(5), and 33(5).

With respect to the group 3 claims, Appellants state "All of the reasons set forth above supporting patentability for the claims in both Group 1 and Group 2 apply to the claims in this group." (Brief-page 22.) Accordingly, for the same reasons we sustained the rejection of the group 1 and 2 claims, we will sustain the rejection of the group 3 claims. Thus, we will sustain the Examiner's rejection of claims 3, 6, 8(5), 9(5) and 36.

Regarding the group 4 claims, Appellants argue, "[T]he claims in this group recite features pertaining to page rotation . . . Levine discloses lateral movement of stamps using a 'touch-and-move' operation with an electronic stylus. This disclosure fails to suggest rotational movement even within the system taught in Levine. The phrase 'placed in any position' referred to in the Office Action simply means that

stamps and other items on the desktop can be moved." (Brief-page 23). We agree with Appellants. Although "placed in any position" could, in the abstract, mean rotational position, in the context of Levine we only see support for lateral or vertical positioning. Thus we will not sustain the Examiner's rejection of the group 4 claims, that is claims 27 and 60. Since claims 28 and 61 depend directly and only from these claims, we will not sustain the Examiner's rejection as to these claims also.

With regard to the group 5 claims, Appellants argue the references to not recite or suggest the claim 17 features of adjusting to the maximum horizontal and vertical dimensions of the stack depiction (Brief-pages 24 and 25). The Examiner responds that Levine, in column 6, lines 54-61, suggests aligning images in stacks. "This does not preclude the adjusting images in a horizontal and/or vertical direction . . . ." (Answer-page 5). We agree with Appellants "Whether or not a reference precludes a feature, of course, is not the proper test for obviousness;" (Brief-page 25). However, the Examiner's cited section of Levine does meet the claim limitation. The cited portion of Levine states "Upon the user

positioning one stamp on top of the other within certain limits (e.g., covering 20%, 40% or 80% of a stamp) the processor automatically forms an aligned stack of the two stamps. The limit within which automatic alignment is activated, is preferably user settable in the manner that other program-defaults for the user are set." Thus, we understand, however the stamps are placed one upon another to form a stack, **the processor automatically adjusts the stack depiction to preset limits.** We read these preset limits to be preset maximum horizontal and vertical dimensions of the stack. Thus, we will sustain the Examiner's rejection of the group 5 claims, that is claims 17(1), and 50.<sup>2</sup>

With respect to the group 6 claims, Appellants argue, "the claims in this group recite features pertaining to including indications of annotations in a miniature replica of a current page . . . . Appellant is unable to find any reasons given in the Office Action which support the rejection of these claims;" (Brief-page 25). However, we note that the final rejection Office Action states at pages 5 and 6 "On page

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<sup>2</sup> We do not include group 5 claims 28(1) and 61 since their rejection was found unsupported with the group 4 claims.

25, Nielsen explicitly teaches that the reader can add annotation to the primary text (see applicant's claims 29, 30, 62, and 70). In column 2, lines 49-53, Levine et al teaches a method of carrying out annotation of text. In view of column 11, lines 35-41 of Levine et al, the annotated current page can further be shown as a miniature replica." Thus, we will sustain the Examiner's rejection of the group 6 claims, that is claims 32(1) and 65.

With respect to the group 7 claims, Appellants state, "reasons set forth above for Group 2 apply here. In addition, the reasons set forth above for the claims in Group 4 apply here." (Brief-page 25). As stated with respect to the group 4 claims, we see no teaching or suggestion for the claimed "rotation". Thus, as indicated **supra**, we will not sustain the Examiner's rejection of claim 27.

With respect to the group 8 claims, Appellants state, "the reasons set forth above for Group 2 apply here. In addition, the reasons set forth above for the claims in Group 5 apply here." (Brief-page 26). As reasoned **supra**, we find the applied references meet the claimed horizontal and



vertical dimensions, hence we will likewise sustain the Examiner's rejection of the group 8 claims, that is claim 17(5).<sup>3</sup>

With respect to the group 9 claims, Appellants state, "reasons set forth above for Group 2 apply here. In addition, the reasons set forth above for the claims in Group 6 apply here." (Brief-page 26). As reasoned *supra*, we find the applied references meet the claimed annotation limitations, hence we will likewise sustain the Examiner's rejection of the group 9 claims, that is claim 32(5).

With respect to the group 10 claims, Appellants state:

The discussion set forth above for Group 1 regarding Nielsen applies here. The discussion set forth above for Group 1 regarding Levine explains that Levine does not disclose or suggest the features of the particular stack representation taught by the present invention and further does not disclose or suggest need of a respective request area. The entire discussion regarding the fact Levine does not disclose or suggest the features of the particular stack representation of the present invention applies here. (Brief-page 26.)

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<sup>3</sup> We do not include in group 8, claim 28, since its rejection was found unsupported with the group 4 claims.

As reasoned *supra*, we have found that Nielsen and Levine do disclose the features of the stack representation claimed, and that the "request area" is found in Nielsen. We note, however, that no "request area" is recited in representative claim 67. Thus, we will sustain the Examiner's rejection of the group 10 claims, that is claims 67 and 70, for the same reasons discussed with respect to the group 1 claims.

With respect to the group 11 claims, Appellants state "The method of claim 68 comprises two sets of features in the alternative, each of which corresponds generally to respective features recited in independent claims of Group 1 and Group 2." (Brief-page 27). Thus, for the same reasons we sustained the Examiner's rejection of the group 1 and group 2 claims, we will sustain the Examiner's rejection of the group 11 claims, that is claim 68.

With respect to the group 12 claims, Appellants state:

[C]laim 69 recites a combination of features that comprise the features discussed above for the claims in Group 1 and Group 2; . . . In addition, claim 69 recites the features of a document name and a navigation bar. The Office Action points out that, in Figure 8.2 of Nielsen, a name is placed above each miniature. As discussed above, the Office Action does not

point out that the features illustrated in Fig. 8.2 pertain to a different system than the system the Office Action relies on to show other recited features including the static icon. Appellant submits that there is no disclosed or suggested reason to combine the features of these two systems, and to further combine the result of the combination with the system disclosed in Levine. (Brief-page 27.)

Here again, we will sustain the Examiner's rejection for the reasons recited *supra*. We agree with the Examiner that the claim limitations are met in our discussion of the group 1 and group 2 claims. And again, regarding our consideration of MOTIVATION *supra*, we find it would have been obvious, when considering the references as a whole, to combine the advantages of each reference into one system, the sum equaling no more than the combined parts. Thus, the rejection of the group 12 claims is sustained, that is claim 69.

Finally, with respect to the group 13 claims, Appellants state "Reasons set forth above for the claims in Group 10 apply here as well as the reasons set forth above for the claims in Group 5." (Brief-page 28). Likewise, and for the same reasons we sustained the rejection of the group 10 and

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group 5 claims, we will sustain the Examiner's rejection of the group 13 claims, that is claim 71.

### **CONCLUSION**

It is the burden of the Examiner to establish why one having ordinary skill in the art would have been led to the claimed invention by the reasonable teachings or suggestions found in the prior art, or by a reasonable inference to the artisan contained in such teachings or suggestions. ***In re Sernaker***, 702 F.2d 989, 995, 217 USPQ 1, 6 (Fed. Cir. 1983). "Additionally, when determining obviousness, the claimed invention should be considered as a whole; there is no legally recognizable 'heart' of the invention." ***Para-Ordnance Mfg. v. SGS Importers Int'l, Inc.***, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995), ***cert. denied***, 117 S.Ct. 80 (1996), ***citing W. L. Gore & Assocs., Inc. v. Garlock, Inc.***, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983), ***cert. denied***, 469 U.S. 851 (1984).

We find that those skilled in the art having the teachings of Nielsen and Levine (Eight is considered

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cumulative) before them would have incorporated the advantages of each into one improved system.

In view of the foregoing, the decision of the Examiner rejecting claims 1 through 6, 8, 9, 12, 17, 24, 29 through 37, 41 through 45, 50, 57, and 62 through 71 under 35 U.S.C. § 103 is affirmed; however, the decision of the Examiner rejecting claims 27, 28, 60 and 61 under 35 U.S.C. § 103 is reversed.

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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

***AFFIRMED-IN-PART***

JERRY SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
LEE E. BARRETT	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
STUART N. HECKER	)	
Administrative Patent Judge	)	

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